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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-1009

HERBERT LOYD LINDAUER,
Petitioner,

VERSUS

The OKLAHOMA CITY URBAN RENEWAL AUTHORITY, a Public Body Corporate, and its Board of Commissioners composed of W. M. HARRISON, F. D. MOON, R. A. HUNTER, JIM LOOKABAUGH and HARVEY EVEREST,
Respondents.

PETITION FOR REHEARING

JOHN B. OGDEN
Suite 1415
City National Bank Tower
Oklahoma City, Oklahoma 73102
Counsel for Petitioner, Herbert Loyd Lindauer

April, 1972

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. 235-0030

TABLE OF CONTENTS

	PAGE
Statement	1
Conclusion	4
Certificate of Good Faith	5
Certificate of Mailing	5

APPENDIX "A"

Opinion of the Supreme Court of Oklahoma in Landauer v. The Oklahoma City Urban Renewal Authority, No. 44957 (Oklahoma Bar Journal), on March 14, 1972, affirming the Judgment of the District Court of Oklahoma County

TABLE OF AUTHORITIES

CASES:

320 F. Supp., 332 (1970)
452 F. 2d. 117 (1971)

STATUTES:

Urban Redevelopment Law, 11 O.S.A. 1971 §§ 1601-1620
11 O.S.A. 1602, 1607, 1652 & 1657

CONSTITUTIONAL PROVISIONS:

Equal Protection Clause—Fourteenth Amendment to the U. S. Constitution

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COMES NOW the above-named Petitioner and shows to this Honorable Court that this Court denied the Petition for Writ of Certiorari on the 27th day of March, 1972, and your Petitioner feels that this Court should vacate such order denying Certiorari herein and for the following reasons and grounds and shows to the Court the following:

1. That on the 14th day of March, 1972, the Supreme Court of the State of Oklahoma rendered its Opinion in the case of *Lindauer, et al.* v. *The Oklahoma City Urban Renewal Authority*. It affirmed the District Court of Oklahoma County, Oklahoma, in denying relief to the Petitioner and held that the Urban Renewal Authority Act referred to in these proceedings was constitutional and did not violate the equal protection clause of the Fourteenth Amend-

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ment to the United States Constitution. Copy of said Opinion is attached to this Petition for Rehearing as Appendix "A" for the benefit of this Court.

2. Your Petitioner shows that a Petition for Rehearing has been filed in the Supreme Court of Oklahoma in said cause and said cause is presently pending upon said Petition for Rehearing before the Supreme Court of the State of Oklahoma.

3. Your Petitioner now shows that since the Supreme Court of Oklahoma has affirmed the District Court of Oklahoma County, that he is now without any relief unless this Court will vacate its order denying Certiorari and grant Certiorari in this cause.

4. Your Petitioner shows that he has challenged the Authority's right to condemn his property on the grounds that the Urban Redevelopment Law, 11 O.S.A. 1971 §§ 1601-1620, violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in that it arbitrarily provides for discrimination in the rights of franchises between citizens of the State of Oklahoma.

> "The Oklahoma statutory provsion, 11 O.S.A. 1602, 1607, 1652 and 1657, on creation of Urban Renewal Authorities, in effect at the time the Oklahoma City Urban Renewal Authority was created on June 27, 1961, by Resolution, provided for rights of franchise for some classes of Oklahoma citizens and excluded rights of franchise for other classes of Oklahoma citizes, determined by numerical population classification only, constituted invidious and arbitrary discrimination in the right to franchise violative of the equal rights and equal protection of the law provisions of the Fourteenth Amendment to the United States Constitution."

This case was originally tried in the United States District Court for the Western District of Oklahoma. See 320 F. Supp. 332 (1970), and said cause was appealed to the Tenth Circuit. See 452 F.2d 117 (1971).

Petitioner feels that the Courts failed to recognize the significance of the laws in effect on June 27, 1961, when the Oklahoma City Urban Renewal Authority was created by Resolution. One Act then applied to cities over 100,000 population (§§ 1602-1607). The other Act then in effect applied to cities under 100,000 population and extended the right of franchise, withheld from the other Act. The validity of the pertinent statutes must be determined as of the date of their application involved which was June 27, 1961. At that time there was no reasonable or rational basis for differing treatment as regards the rights of franchise, all other pertinent portions of the two enactments being identical. Only the population classification provided any basis whatsoever for differing treatment in rights of franchise on June 27, 1961.

So long as the first statutory enactment stood by itself, the fact that it applied urban redevelopment provisions to cities only over 100,000 population, there was no factor of discrimination as to rights of franchise involved; but, the subsequent enactment of the identical provisions of the statute applicable to cities under 100,000 population with the added provision for rights of franchise, thereby presented for the first time the question of discrimination in rights of franchise based solely on arbitrary population classification. The significance thereof was overlooked by the courts in the Opinions above-mentioned. The prohibited

arbitrary and invidious discrimination violative of the Equal Rights and Equal Protection of the Law provisions of the Fourteenth Amendment to the United States Constitution, includes the exclusion of a part of a state's citizens from franchise rights by *numerical population classification*, as the sole articulated basis for including some and "fencing out" others equally qualified and having equal substantial interests and being equally affected thereby, when such exclusions, at the time of their creation, are unnecessary to promote a compelling state interest.

CONCLUSION

Petitioner, therefore, shows to this Court that a valuable constitutional right has been denied to him and that this Court should assume jurisdiction and reverse said cause.

Respectfully submitted,

JOHN B. OGDEN
Suite 1415
City National Bank Tower
Oklahoma City, Oklahoma 73102
Counsel for Petitioner, Herbert Loyd Lindauer

April, 1972

CERTIFICATE OF GOOD FAITH

I, the undersigned counsel, hereby certify that the above and foregoing Petition for Rehearing is presented in good faith and not for delay, but in order that substantial justice may be done.

Counsel also certifies that the Petition for Rehearing herein is presented for the further reason that the grounds of this Petition for Rehearing were not, in the opinion of counsel, fully and clearly presented and some of the authorities presented in this Petition for Rehearing were not presented in the original Petition for Writ of Certiorari.

JOHN B. OGDEN
Counsel for Petitioner

CERTIFICATE OF MAILING

I hereby certify that I served copies of the above and foregoing Petition for Rehearing on:

Messrs. James D. Batchelor,
Jerry L. Salyer, and
John W. Swinford, Jr., Esquires
15 N. Robinson, Suite 506
Oklahoma City, Oklahoma 73102

this ..... day of April, 1972.

JOHN B. OGDEN
Counsel for Peitioner

APPENDIX "A"

LINDAUER et al. v. THE OKLAHOMA CITY URBAN RENEWAL AUTHORITY
No. 44957. March 14, 1972.
(For Official Publication)

Appeal from District Court, Oklahoma County; Harold C. Theus, Trial Judge.

In a condemnation proceeding commenced by the Oklahoma City Urban Renewal Authority, defendants challenged the Authority's right to condemn their property on the ground that the Urban Redevelopment Law, 11 O.S. 1971, §§1601-20, violates the equal protection clause of the fourteenth amendment to the United States Constitution. The trial court held the Act constitutional and defendants appeal. Affirmed.

Johnson & Fisher, By: Ted R. Fisher, Tulsa, for plaintiffs in error.

James D. Batchelor, Jerry L. Salyer, Barry W. Johnson, John W. Swinford, Jr., Harry H. Selph, II, Oklahoma City, for defendant in error.

McINERNEY, J. The Oklahoma City Urban Renewal Authority, plaintiff, commenced a condemnation proceeding to acquire fee simple title to property owned by defendant Lindauer and occupied by defendant Grace Cleaners, Inc., his tenant. Claiming that the Authority was created under an unconstitutional legislative enactment, defendants challenged the Authority's right to condemn their property. The trial court ruled against defendants and they appeal.

In 1959, the Legislature adopted the Urban Redevelopment Law, 11 O.S. 1971, §§1601-20. This Law applies only to cities having a population of more than 100,000, 11 O.S. 1971, §1602, and thus includes Oklahoma City. Under Section 1607, a city elects to exercise authority granted in the

Act by a resolution of its governing body. At the same session, the Legislature enacted a similar urban renewal law, The Urban Redevelopment Act, 11 O.S. 1971, §§1651-70, which applies to cities with a population exceeding 10,000, but not exceeding 100,000. 11 O.S. 1971, §1652. However, in addition to a resolution of a city's governing body, a city's exercise of authority under this Act must be approved by a majority of its qualified property taxpaying voters who vote at an election held to determine that question. 11 O.S. 1971, §1657. Later, the Legislature again adopted another similar urban renewal law for cities of 10,000 or less population, The Urban Redevelopment Act of 1961, 11 O.S. 1971, §§1701-18. This 1961 Act also required approval of a city's governing body and its electorate before the city could exercise the authority granted by the Act. 11 O.S. 1971, §1707.

Defendants contend that the Urban Redevelopment Law, 11 O.S. 1971, §§1601-20, violates the equal protection clause of the fourteenth amendment to the United States Constitution. To support this contention, defendants argue that qualified property taxpaying voters in cities of more than 100,000 are denied equal treatment under the law because they are not allowed to vote on whether their cities should exercise urban renewal authority, whereas similarly qualified voters in all other cities are permitted to vote on this issue. Further, defendants assert that the three urban renewal Acts create two distinct classes of property taxpaying voters, that the only basis for this classification is population, and that the classification is arbitrary and not necessary to promote a compelling state interest.

The validity of urban renewal legislation was upheld against constitutional challenges in Berman v. Parker, 348 U. S. 26 (1954). Likewise, this Court declared the Urban Redevelopment Law, 11 O.S. 1971, §§1601-20, to be constitutional and valid in Isaacs v. Oklahoma City, Okl., 437 P.2d 229 (1966). In *Isaacs*, the Court specifically held that the Act was not a special or local law prohibited by the Okla-

homa Constitution, 437 P.2d at 236. Similarly, in Kansas City v. Robb, 183 Kan. 834, 332 P.2d 520 (1958), the Supreme Court of Kansas held that the urban renewal Act was not special legislation in violation of the Kansas Constitution, although this legislation required a vote to issue general obligation urban renewal bonds in cities of 125,000 or less population, but required no vote in cities exceeding 125,000 population, except upon a protest petition. Furthermore, in Lindauer v. Oklahoma City Urban Renewal Authority, W.D. Okl., 320 F. Supp. 332 (1970), affirmed 452 F.2d 117 (10th Cir. 1971), the Court rejected a constitutional attack on the Urban Redevelopment Law, 11 O.S. 1971, §§1601-20, which was based on the same grounds as the present constitutional challenge to the validity of this Act. Moreover, plaintiff Lindauer in that case is the same person as defendant Lindauer in the case now before this Court. In that case, Judge Daugherty ruled that the classification created by our urban renewal Acts was reasonable and thus did not violate the equal protection clause of the fourteenth amendment. We agree with the reasoning of Judge Daugherty in Lindauer, supra.

In *Robb*, the Court justified the classification by pointing out that larger cities contain more slum and blighted areas than smaller cities; that, therefore, the need for urban renewal in larger cities is greater and more pressing; and that, under these circumstances, population is a legitimate ground for classification in an urban renewal law. 332 P.2d at 523. We approve of the rationale used by the Supreme Court of Kansas to justify a classification based on population. Consequently, we hold that the different methods provided by the Legislature for implementation of our urban renewal legislation have a rational basis and thus are not arbitrary or unreasonable. *See* McDonald v. Board of Election Comm'rs, 394 U.S. 802, 809 (1969); Berman v. Parker, 348 U.S. 26, 33 (1964).

The Urban Redevelopment Law, 11 O.S. 1971, §§1601-20, does not result in unequal treatment of voters in cities

having a population of more than 100,000. None of them have the opportunity to directly participate in their cities' decisions to exercise urban renewal authority. Yet, all of them can indirectly participate in these decisions at elections held to select members of the governing bodies of their cities; each of them exerts equal influence over the decision making process provided by the Act. See Kramer v. Union Free School Dist. No. 15, 395 U. S. 621, 627 n.7 (1969).

Since all the voters in cities of more than 100,000 population receive equal treatment under the Urban Redevelopment Law, 11 O.S. 1971, §§1601-20, the Act does not create a constitutionally impermissible classification such as the classifications involved in City of Phoenix v. Kolodziejski, 399 U. S. 204 (1970) (only real property taxpayers allowed to vote on general obligation bonds); Cipriano v. City of Houma, 395 U. S. 701 (1969) (only property taxpayers allowed to vote on revenue bonds); Kramer v. Union Free School District No. 15, 395 U. S. 621 (1969) (only owners or lessees of real property, or parents or custodians of children allowed to vote in school district elections); Carrington v. Rash, 380 U. S. 89 (1965) (members of armed services not allowed to vote). Moreover, in our opinion, allowing voters in some separate and distinct municipal corporations to vote directly on matters affecting them does not result in a denial of the franchise to voters in other municipal corporations merely because they vote only indirectly on similar matters. Unless a classification deprives some group or groups of the right to vote, the classification need not be justified by a compelling state interest. Kramer, supra at 626-27; McDonald v. Board of Election Comm'rs, 394 U. S. 802, 806-08 (1968). Thus, since we have determined that the distinctions created by our urban renewal legislation are reasonable rather than arbitrary, this legislation does not violate the equal protection clause of the fourteenth amendment. Lindauer v. Oklahoma City Urban Renewal Authority, 10th Cir., 452 F.2d 117 (1971); Packard v. Ban-

ton, 264 U. S. 140, 143-144 (1924); Hayes v. Missouri, 120 U. S. 68, 71-72 (1887); McDonald v. Board of Election Comm'rs, supra.

Accordingly, the judgment of the district court is affirmed, and the case is remanded for a determination of the amount of compensation to be paid defendants for their property.

BERRY, C.J., and DAVIDSON, V.C.J., and WILLIAMS, JACKSON, IRWIN, LAVENDER, and BARNES, JJ., concur.